



1 On March 12, 2012, Petitioner filed a First Amended Petition  
2 ("Petition"). The Petition again failed to name a Respondent and, thus,  
3 violated both Rule 2(a) of the Rules Governing Section 2254 Cases in the  
4 United States District Courts and the January 20 Order. Rather than  
5 attempt to correct the sole, possibly cognizable claim alleged in the  
6 original petition, Petitioner alleged 23 claims in the Petition, the  
7 majority of which plainly are not cognizable.

8  
9 **THE OSC**

10  
11 On June 8, 2012, Magistrate Judge Nagle issued an Order To Show  
12 Cause Re: Dismissal For Untimeliness ("OSC"). The OSC identified some,  
13 although not all, of the reasons why various claims alleged in the  
14 Petition are not cognizable. For example, in Grounds One, Two, and  
15 Five, Petitioner complains about the procedures used by the state courts  
16 in his numerous state habeas proceedings, notwithstanding the fact that  
17 the Court has explicitly advised Petitioner that claims of this nature  
18 are not cognizable on federal habeas review.<sup>1</sup> In Grounds Three, Seven,  
19 Ten, Sixteen, Seventeen, and Twenty-Three, Petitioner complains about  
20 events that occurred during his incarceration, *i.e.*, he asserts  
21 conditions of confinement claims that, if cognizable at all, must be  
22 raised through a civil rights action, not a habeas petition. Again,

23  
24 <sup>1</sup> As discussed *infra*, since 1995, Petitioner has filed, or  
25 submitted for filing, civil complaints and habeas petitions in over 25  
26 separate actions in this district. Pursuant to Rule 201 of the Federal  
27 Rules of Evidence, the Court has taken judicial notice of the records,  
28 dockets, and files in Petitioner's prior actions in this district and in  
the United States Court of Appeals for the Ninth Circuit. In a January  
23, 2012 dismissal order (at pp. 3-4) in one of Petitioner's more recent  
actions -- Case No. CV 11-6141-TJH (MAN) -- the Court specifically  
explained why a claim attacking state habeas procedures is not  
cognizable in a Section 2254 habeas action.

1 this is a defect about which Petitioner has been cautioned numerous  
2 times.<sup>2</sup> By Ground Seven, Petitioner complains that he was circumcised  
3 when he was an infant and, thus, subjected to "sexual child abuse" and  
4 an "abortion" of his foreskin that has affected his ability to urinate.  
5 As Magistrate Nagle advised in the OSC, this event and its alleged  
6 aftermath cannot possibly state a basis for federal habeas relief. The  
7 OSC further advised that numerous other claims alleged in the Petition  
8 (e.g., Grounds Eight, Nine, Twelve, Fifteen, and Twenty) do not state  
9 claims for habeas relief but, rather, set forth only a host of  
10 procedural contentions.

11  
12 In the OSC, Magistrate Judge Nagle advised that: as she had  
13 observed in the January 20 Order (at 2 n.1), "it seems highly unlikely  
14 that the instant Petition is timely"; and if this action is untimely,  
15 the expenditure of limited Court resources on screening the Petition and  
16 any future amended petitions would be inappropriate and unwarranted.  
17 The OSC then explained, in detail, why this action appears to be  
18 untimely. Magistrate Judge Nagle directed Petitioner to file a response  
19 to the OSC by no later than July 2, 2012, in which he was required to  
20 state whether he concedes or disputes that this action is untimely. The  
21 OSC expressly cautioned Petitioner that, if he "disputes that this  
22 action is untimely, he must explain clearly and in detail why it is not,  
23 and provide any available competent evidence that establishes the

---

24  
25 <sup>2</sup> For example, in 2009, Petitioner filed a series of eight  
26 purported habeas petitions raising complaints about the conditions of  
27 his confinement. All eight actions were summarily dismissed by Orders  
28 explicitly advising Petitioner that such complaints cannot be raised as  
habeas claims. See dockets in Case Nos. CV 09-1896-TJH (MAN), CV 09-  
2044-TJH (MAN), CV 09-2050-TJH (MAN), CV 09-2054-TJH (MAN), CV 09-2056-  
TJH (MAN), CV 09-2058-TJH (MAN), CV 09-2064-TJH (MAN), and CV 09-2074-  
TJH (MAN).

1 timeliness of this action." (OSC at 10.)

2  
3       Thereafter, Petitioner sought and was granted two extensions of  
4 time to respond to the OSC. Rather than promptly file his response,  
5 Petitioner filed a motion for judgment on the pleadings on July 23,  
6 2012, in which he claimed that, because the OSC did not address each of  
7 the 23 claims alleged in the Petition in detail, Magistrate Judge Nagle  
8 purportedly had "admitted the merits" of nine of the Petition's claims,  
9 thus requiring the grant of habeas relief. The motion was denied on  
10 July 27, 2012, because it was factually and legally frivolous ("July 27  
11 Order"). On August 6, 2012, Petitioner filed an "objection" to the July  
12 27 Order, asserting that he is "sick" and the Court should order  
13 Magistrate Judge Nagle to "assist petitioner in preparing a Second  
14 Amended Petition." To the extent that Petitioner's August 6, 2012  
15 "objection" seeks reconsideration of the July 27 Order, whether pursuant  
16 to 28 U.S.C. § 636(b) or Fed. R. Civ. P. 72, Petitioner's request is  
17 DENIED, because: the denial of his motion for judgment on the pleadings  
18 was correct; and Petitioner's assertion that the Magistrate Judge should  
19 be required to assist him in preparing pleadings is baseless.

20  
21       On August 9, 2012, Petitioner filed a Response to the OSC. The  
22 Response is not made under penalty of perjury and lacks any documentary  
23 support, and thus, its allegations are not competent to establish  
24 anything. Nonetheless, for argument's sake, the Court has considered  
25 them. Specifically, the Court has considered Petitioner's assertion  
26 that this action should be considered timely for the following alleged  
27 reasons:

1 1. Petitioner is "sick" and presently being treated for scabies.  
2 (Response at 1, 3.)  
3

4 2. Petitioner has "been sick most of [his] life." (Response at 1.)  
5

6 3. The untimeliness of this action is due to Petitioner having made  
7 "unconscious mistakes of fact" regarding filing deadlines and the  
8 statutes of limitations, which he assumed would be automatically  
9 tolled because Petitioner has asserted "obvious claims of  
10 miscarriage of justice." (*Id.*)  
11

12 4. All of Petitioner's claims should be tolled, because "he has a  
13 newly discovered claim of sentence error" asserted in Ground  
14 Twenty-Two of the Petition. (Response at 2.)  
15

16 5. Petitioner recently has been unable to obtain photocopies of  
17 documents in his possession that show his sentence is illegal.  
18 (*Id.*)  
19

20 6. Petitioner's property is in storage, and thus, he lacks access to  
21 his personal copy of a Rutter Group secondary source publication.  
22 (Response at 3.)  
23

24 7. As he writes, Petitioner loses his train of thought and presently  
25 is experiencing writer's block. (*Id.*)  
26

26 ///

27 ///

28 ///

1                                   **THIS ACTION IS UNTIMELY**

2

3           For the reasons set forth below, it is plain that this action is

4 grossly untimely and, further, that tolling principles cannot alter that

5 conclusion.

6

7   I.   The Commencement Of Petitioner's Limitations Period

8

9           Petitioner purports to lack knowledge of the dates on which he was

10 convicted of murder in Los Angeles Superior Court Case No. A537881 and

11 sentenced, as well as of the length of his sentence. (Petition at 2.)

12 The record shows that, on May 11, 1988, Petitioner was placed in the

13 custody of California correctional authorities to begin serving a

14 sentence of life without the possibility of parole for murder. (See

15 Case No. CV 97-1693-TJH (MAN), Docket No. 217 at 5.) Petitioner alleges

16 that he appealed his conviction to the California Court of Appeal, but

17 he does not know the date on which it was affirmed. (Petition at 2-3.)

18 The electronically available dockets for the California Court of Appeal<sup>3</sup>

19 do not include detailed docket entries for cases that were complete

20 prior to 1996, and there is no decision on WESTLAW pertaining to any

21 appeal by Petitioner. The California Court of Appeal docket does show

22 that Petitioner's appeal commenced on June 17, 1988, in Case No.

23 B036268, although it does not show the date of the California Court of

24 Appeal's decision. Petitioner alleges that he did not seek review in

25 the California Supreme Court (Petition at 3), and thus, his direct

26

---

27           <sup>3</sup> See <http://appellatecases.courtinfo.ca.gov>. Pursuant to Rule

28 201 of the Federal Rules of Evidence, the Court takes judicial notice of the official dockets for the California Supreme Court and the California Courts of Appeal available through this site.

1 appeal would have been final following the conclusion of his time to  
2 seek review in the state high court.

3  
4 Although the Court lacks evidence of the precise date on which  
5 Petitioner's appeal concluded, it can reasonably be assumed that  
6 Petitioner's conviction was affirmed within no more than seven years of  
7 his conviction date, *i.e.*, by 1995; realistically, it is likely his  
8 appeal concluded years before then. For state prisoners, such as  
9 Petitioner, whose convictions became final prior to the April 1996  
10 effective date of the AEDPA,<sup>4</sup> the 28 U.S.C. § 2244(d) one-year  
11 limitations period begins to run no earlier than April 25, 1996.  
12 Malcolm v. Payne, 281 F.3d 951, 955 (9th Cir. 2002). Therefore,  
13 although Petitioner's conviction became final prior to April 1996, he  
14 had until April 24, 1997, in which to file a timely federal habeas  
15 petition challenging his 1988 conviction. Patterson v. Stewart, 251  
16 F.3d 1243, 1246 (9th Cir. 2001).

17  
18 II. The Running Of Petitioner's Limitations Period

19  
20 Petitioner did not file a federal habeas petition before or during  
21 his April 1996 through April 1997 limitations period. Instead, he  
22 focused his efforts on the pursuit of civil rights actions in this  
23 district and elsewhere.

24  
25 On July 18, 1994, Petitioner filed a civil rights action in the  
26 United States District Court for the Eastern District of California

27  
28 <sup>4</sup> In his Response, Petitioner does not dispute that his  
conviction became final prior to April 1996.

1 (Case No. CV 94-1158-WBS-JFM (the "E.D. Cal. Case")). After pursuing  
2 discovery, a temporary restraining order, and injunctive relief,  
3 Petitioner stipulated to dismiss the E.D. Cal. Case, which was dismissed  
4 on April 19, 1995.

5  
6 On April 14, 1995, and October 17, 1995, Petitioner submitted  
7 proposed civil rights complaints to this district in, respectively, Case  
8 Nos. CV 95-5412-UA and CV 95-7002-UA, for which he was denied leave to  
9 proceed without prepayment of the filing fee. On November 7, 1995,  
10 Petitioner filed a civil rights action (Case No. CV 95-7595-TJH (JG)),  
11 which was dismissed on June 24, 1996, for failure to prosecute. In late  
12 1995, Petitioner filed a civil rights action in the state court, which  
13 was removed to this Court on December 27, 1995 (Case No. CV 95-8755-RAP  
14 (CT)), and thereafter remanded to the state court on February 2, 1996.  
15 On November 14, 1996, Petitioner submitted another civil rights  
16 complaint in Case No. CV 96-7997-UA, for which he was denied leave to  
17 proceed without prepayment of the filing fee. On March 14, 1997, in  
18 Case No. CV 97-1693-TJH (MAN), Petitioner filed a civil rights action  
19 (the "1997 Civil Rights Case"). Petitioner vigorously litigated the  
20 1997 Civil Rights Case until defendants were granted summary judgment on  
21 July 5, 2001.<sup>5</sup>

22  
23 In short, Petitioner was able to, and did, actively pursue numerous  
24

---

25 <sup>5</sup> The docket for the 1997 Civil Rights Case contains over 220  
26 entries. During the four years this case was pending, Petitioner, among  
27 other things, repeatedly sought the issuance of temporary restraining  
28 orders and preliminary injunctions, filed numerous amended complaints,  
repeatedly appealed interlocutory orders, made numerous procedural and  
evidentiary motions, and repeatedly sought reconsideration of court  
orders. (See, e.g., Docket Nos. 15, 26, 34-35, 43, 84, 96, 105, 110,  
120, 122-23, 126, 129, 131, 138, 168, 172, 185-96, 201, 209, and 214.)



1 civil rights actions both before and throughout the running of his  
2 limitations period. He failed, however, to seek federal habeas relief  
3 during his limitations period. Accordingly, Petitioner's limitations  
4 period expired on April 24, 1997.

5  
6 III. Tolling Does Not Render The Petition Timely.

7  
8 A. Statutory Tolling

9  
10 The Section 2244(d) limitations period is subject to a statutory  
11 tolling provision, which suspends it for the time during which a  
12 "properly-filed" application for postconviction or other collateral  
13 review is "pending" in state court. 28 U.S.C. § 2244(d)(2); Patterson,  
14 251 F.3d at 1247. Additionally, in appropriate circumstances,  
15 applications for state postconviction relief filed in an upward  
16 progression may be deemed "pending" under Section 2244(d)(2) "even  
17 during the intervals between the denial of a petition by one court and  
18 the filing of a new petition at the next level, if there is not undue  
19 delay." Biggs v. Terhune, 339 F.3d 1045, 1046 (9th Cir. 2003); *see also*  
20 Evans v. Chavis, 546 U.S. 189, 191, 126 S. Ct. 846, 849 (2006).

21  
22 According to the dockets of the California Court of Appeal and  
23 California Supreme Court, Petitioner filed a single state habeas  
24 petition prior to the expiration of his limitations period on April 24,  
25 1997. Specifically, on March 7, 1997, Petitioner filed a habeas  
26 petition in the California Court of Appeal (Case No. B110128), which was  
27 denied on November 1, 1998. That state appellate court petition, thus,  
28 might serve as a basis for tolling Petitioner's limitations period.

1 While that petition was pending, Petitioner filed another habeas  
 2 petition in the same court on January 20, 1998 (Case No. B118642), which  
 3 was denied on November 1, 1998, and habeas petitions in the California  
 4 Supreme Court on March 2, 1998 (Case No. S068307), and May 18, 1998  
 5 (Case No. S070368), which both were denied on January 25, 2000. In  
 6 addition, between late 1998, and August 12, 2002, Petitioner  
 7 continuously filed and had pending habeas petitions, mandamus petitions,  
 8 and/or "appeals" in the California Court of Appeal and the California  
 9 Supreme Court.<sup>6</sup> On June 17, 2003, in Case No. B167911, Petitioner  
 10 attempted to "appeal" to the California Court of Appeal from a denial of  
 11 habeas relief; that "appeal" was dismissed on July 15, 2003.<sup>7</sup>

---

13 <sup>6</sup> See California Court of Appeal Case Nos. B127647 (habeas  
 14 petition filed 12/7/98 and denied 1/15/99), B128240 (habeas petition  
 15 filed 12/28/98 and denied 1/6/99), B128773 (habeas petition filed  
 16 1/15/99 and denied 1/20/99), B128945 (habeas petition filed 1/22/99 and  
 17 denied 2/5/99), B129313 (habeas petition filed 2/8/99 and denied  
 18 3/18/99), B135238 (habeas petition filed 9/20/99 and denied 9/30/99),  
 19 B139395 (appeal filed 2/29/00 and dismissed 4/5/00), B140795 (mandamus  
 petition filed 4/25/00 and denied 5/5/00), B141763 (mandamus petition  
 filed 6/1/00 and denied 6/9/00), B143193 (appeal filed 7/31/00 and  
 dismissed 12/3/01), B151966 (habeas petition filed 8/2/01 and denied  
 8/15/01), and B160286 (habeas petition filed 7/26/02 and denied  
 8/12/02).

20 See also California Supreme Court Case Nos. S075410 (habeas  
 21 petition filed 12/18/98 and denied 5/26/99), S075684 (habeas petition  
 22 filed 12/30/98 and denied 2/24/99), S076526 (habeas petition filed  
 23 2/10/99 and denied 5/26/99), S080433 (habeas petition filed 7/8/99 and  
 24 denied 10/27/99), S081345 (habeas petition filed 8/12/99 and denied  
 10/27/99), S083156 (petition for review filed 10/28/99 and denied  
 12/1/99), S086158 (habeas petition filed 2/18/00 and denied 4/26/00),  
 S088266 (habeas petition filed 5/10/00 and denied 8/30/00), S089786  
 (petition for review filed 7/6/00 and denied 7/10/00), and S093260  
 (habeas petition filed 11/30/11 and denied 3/28/01).

25 <sup>7</sup> During this time frame, Petitioner also pursued a variety of  
 26 federal actions. He submitted three proposed civil rights complaints to  
 27 this district, for which he was denied leave to proceed without  
 28 prepayment of the filing fee. See Case Nos. CV 00-581-UA, denied  
 1/18/00, CV 01-2481-UA, denied 3/15/01, and CV 01-7258-UA, denied  
 8/31/01. Petitioner unsuccessfully pursued an appeal in connection with  
 one of these actions. (See Ninth Circuit Case No. 00-80030.)

1       Notwithstanding the identification of the statutory tolling issue  
2 in the OSC, Petitioner has failed to provide any information regarding  
3 his state post-conviction efforts with respect to his 1988 conviction.  
4 Nonetheless, based on the results of the Court's own research efforts as  
5 outlined above, it is possible that Petitioner might be entitled to some  
6 continuous statutory tolling of his limitations period past its  
7 otherwise presumptive expiration on April 24, 1997. If, for argument's  
8 sake, the Court were to assume that Petitioner's limitations period  
9 could be statutorily tolled past April 24, 1997, for some or all of the  
10 period of time during which Petitioner pursued state habeas relief  
11 between 1997 and 2002, it is clear that his limitations period  
12 necessarily would have expired within no more than a year after the  
13 conclusion of any such hypothetically-available continuous statutory  
14 tolling. Under even the most generous statutory tolling scenario that  
15 can be posited, Petitioner's limitations period necessarily would have  
16 expired in 2003, at the latest, if not years earlier. As the instant  
17 action was not filed until July 2011, it cannot be rendered timely by  
18 whatever Section 2244(d)(2) statutory tolling might be available to

19  
20  
21 \_\_\_\_\_  
22 Petitioner also pursued interlocutory appeals and finally a merits  
23 appeal in connection with the 1997 Civil Rights Case. (See Ninth  
24 Circuit Case Nos. 99-56945, 99-70350, and 01-56406.)

25       In addition, Petitioner filed two Section 2254 habeas  
26 petitions in this district. The first was filed on September 1, 1999 in  
27 Case No. CV 99-8866-CM (MAN). Because the claim alleged was not  
28 cognizable as a federal habeas claim, the petition was dismissed without  
prejudice on September 15, 1999. Petitioner unsuccessfully appealed the  
dismissal of that case. (See Ninth Circuit Case No. 99-56764.) On  
January 9, 2001, Petitioner filed a second Section 2254 petition, which,  
unlike the 1999 petition, did actually seek to make a habeas challenge  
to Petitioner's 1988 state court conviction (the "2001 Federal  
Petition"). On May 15, 2001, the 2001 Federal Petition was dismissed at  
Petitioner's request. See Case No. CV 01-207-TJH (MAN).

1 Petitioner.<sup>8</sup>

2  
3 B. Equitable Tolling

4  
5 The Section 2244(d) one-year limitations period may be equitably  
6 tolled in appropriate circumstances. Holland v. Florida, \_\_\_ U.S. \_\_\_,  
7 130 S. Ct. 2549, 2560-62 (2010). However, application of the equitable  
8 tolling doctrine is the exception rather than the norm. See, e.g.,  
9 Waldron-Ramsey v. Pacholke, 556 F.3d 1008, 1011 (9th Cir.  
10 2009)(characterizing the Ninth Circuit's "application of the doctrine"  
11 as "sparing" and a "rarity"); Miles v. Prunty, 187 F.3d 1104, 1107 (9th  
12 Cir. 1999)("equitable tolling is unavailable in most cases"). "Indeed,

13  
14 <sup>8</sup> As discussed *infra*, in 2009, Petitioner filed numerous state  
15 habeas petitions. However, he may not receive gap tolling for the time  
16 between the conclusion of his 1998-2002 state habeas efforts and his  
17 subsequent state habeas efforts in 2009, because Petitioner's  
18 limitations period expired many years before he again began seeking  
19 state habeas relief in 2009. His 2009 efforts simply were many years  
20 too late for purposes of Section 2244(d)(2). See, e.g., Laws v.  
Lamarque, 351 F.3d 919, 922 (9th Cir. 2003)("because [petitioner] did  
not file his first state petition until after his eligibility for  
federal habeas had already elapsed, statutory tolling cannot save his  
claim in the first instance"); Ferguson v. Palmateer, 321 F.3d 820, 823  
(9th Cir. 2003)("section 2244(d) does not permit the reinitiation of the  
limitations period that has ended before the state petition was filed").

21 Moreover, on August 26, 2009, the California Supreme Court  
22 denied the habeas petition filed in Case No. S172112 with a citation to  
In re Robbins, 18 Cal. 4th 770, 780 (1998), thus indicating that the  
23 petition was denied on the ground of untimeliness. As a result, Section  
24 2244(d)(2) tolling is precluded for the time while this petition was  
pending and any gap in time that preceded it. See, e.g., Allen v.  
Seibert, 552 U.S. 3, 6, 128 S. Ct. 2, 4 (2007)(*per curiam*)("a state  
25 postconviction petition is . . . not 'properly filed' if it was rejected  
by the state court as untimely"); Lahey v. Hickman, 633 F.3d 782, 785-86  
26 (9th Cir. 2011)("we have consistently held that statutory tolling 'is  
unavailable where a state habeas petition is deemed untimely under  
California's timeliness standards'")(citation omitted), *cert. denied* 131  
27 S. Ct. 3039 (2011); Bonner v. Carey, 425 F.3d 1145, 1149 (9th Cir.  
2005), *as amended by* 439 F.3d 993 (9th Cir. 2006)("if a state court  
28 denies a petition as untimely, none of the time before or during the  
court's consideration of that petition is statutorily tolled").

1 the threshold necessary to trigger equitable tolling is very high, lest  
2 the exceptions swallow the rule." Miranda v. Castro, 292 F.3d 1063,  
3 1066 (9th Cir. 2002)(internal quotation marks and citation omitted); see  
4 also Lakey, 633 F.3d at 786 (noting the "necessity" of a "high  
5 threshold" for application of the equitable tolling doctrine).

6  
7 As the Supreme Court has explained, a habeas petitioner may receive  
8 equitable tolling only if he "shows '(1) that he has been pursuing his  
9 rights diligently, and (2) that some extraordinary circumstances stood  
10 in his way' and prevented timely filing." Holland, 130 S. Ct. at 2562  
11 (citation omitted); see also Pace v. DiGuglielmo, 544 U.S. 408, 418 and  
12 n.8, 125 S. Ct. 1807, 1814 and n.8 (2005). A petitioner seeking  
13 application of the doctrine bears the burden of showing that it should  
14 apply to him. *Id.* at 418, 125 S. Ct. at 1814-15; see also Lawrence v.  
15 Florida, 549 U.S. 327, 336, 127 S. Ct. 1079, 1085 (2007)(observing that,  
16 to receive equitable tolling, the petitioner must prove the above two  
17 requirements).

18  
19 The petitioner must establish not only the existence of an  
20 extraordinary circumstance but also that the extraordinary circumstance  
21 was, in fact, the cause of the untimely filing of the federal habeas  
22 petition. See Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003); see  
23 also Bryant v. Arizona Att. Gen., 499 F.3d 1056, 1061 (9th Cir. 2007)(a  
24 petitioner must show that the claimed extraordinary circumstances were  
25 the cause of his untimeliness); Roy v. Lampert, 465 F.3d 964, 969 (9th  
26 Cir. 2006)(the extraordinary circumstances claimed must be the cause of  
27 the petition's untimeliness).

1 In addition, the "petitioner must show that his untimeliness was  
 2 caused by an external impediment and not by his own lack of diligence,"  
 3 Bryant, 499 F.3d at 1061, and that he pursued his rights diligently  
 4 throughout the relevant period, Roy, 465 F.3d at 972 (opining it is  
 5 "important" that petitioners have "pursued their claims within a  
 6 reasonable period of time *before* the external impediment" alleged to  
 7 warrant equitable tolling arose). A failure to act diligently  
 8 throughout the time at issue will break the link of causation between  
 9 the extraordinary circumstance and the failure to timely pursue relief.  
 10 See, e.g., Spitsyn, 345 F.3d at 802 (equitable tolling is not available  
 11 unless the petitioner exercised reasonable diligence "in pursuing the  
 12 matter, under the circumstances he faced"); Guillory v. Roe, 329 F.3d  
 13 1015, 1016, 1018 (9th Cir. 2003)(declining to afford equitable tolling,  
 14 despite a circumstance that otherwise would warrant it, when the  
 15 petitioner failed to act diligently in exhausting his claims); Miles,  
 16 187 F.3d at 1107 (equitable tolling is not appropriate when a  
 17 petitioner's own conduct, rather than "external forces," accounts for  
 18 the failure to file a timely habeas claim).

19  
 20 Following his above-described 1995 through 2002 state and federal  
 21 habeas and civil rights efforts, Petitioner did not again seek state  
 22 habeas relief or any relief in this Court until 2009.<sup>9</sup> In 2009,  
 23 Petitioner filed a flurry of habeas petitions in the state courts,<sup>10</sup> as

---

24  
 25 <sup>9</sup> He did, however, pursue post-judgment relief in the E.D. Cal  
 26 Case in December 2004, filing two motions to set aside the judgment in  
 that case. (See Docket Nos. 31-32 in Case No. 94-cv-1158-WBS-JFM.)

27 <sup>10</sup> See California Court of Appeal Case Nos. B214334 (habeas  
 28 petition filed 3/3/09 and denied on 3/18/09), B216160 (habeas petition  
 filed 5/19/09 and denied 6/2/09), B217461 (habeas petition filed 7/13/09

1 well as numerous civil rights and habeas filings in this district.<sup>11</sup> On  
 2 September 21, 2010, Petitioner filed a notice of appeal in the  
 3 California Court of Appeal (Case No. B227472) with respect to a  
 4 September 2, 2010 judgment of the trial court, which was dismissed on  
 5 October 28, 2010.

6  
 7 The evidence of record, which Petitioner does not controvert, shows  
 8 that since the commencement of his limitations period in April 1996, he  
 9 has been able to pursue habeas and civil rights relief in the state and  
 10 federal courts. Indeed, he has done so repeatedly and vigorously, as  
 11 detailed above. His numerous above-described state post-conviction  
 12 filings establish that Petitioner was *not* impeded from seeking habeas  
 13 relief from 1996 through 2002. Moreover, as of January 2001, when  
 14 Petitioner filed the 2001 Federal Petition in this Court, he plainly was  
 15 able to seek federal habeas relief. That he opted to withdraw that  
 16 petition and thereafter failed to seek federal habeas relief on a timely  
 17 basis was the result of his own choice, not of any extraordinary  
 18 circumstance beyond his control. This fact alone clearly precludes

19  
 20 and denied 7/31/09), B217928 (habeas petition filed 8/4/09 and denied  
 21 8/13/09), and B218058 (habeas petition filed 8/7/09 and denied 8/25/09).  
 22 See also California Supreme Court Case Nos. S172112 (habeas petition  
 filed 4/16/09 and denied 8/26/09), and S175243 (habeas petition filed  
 8/5/09 and denied 12/23/09).

23 <sup>11</sup> As discussed in Note 2, Petitioner filed eight purported  
 24 habeas petitions in this Court in 2009. He unsuccessfully appealed the  
 25 adverse judgments in those cases. (See Ninth Circuit Case Nos. 09-  
 26 56295, 09-56302, 09-56304, 09-56305, 09-56306, 09-56308, 09-56309, and  
 27 09-56383.) Petitioner also submitted five civil rights complaints, for  
 28 which he was denied leave to proceed without prepayment of the filing  
 fee. (See Case Nos. CV 09-1173-UA (submitted 2/18/09 and closed  
 3/25/09), CV 09-3292-UA (submitted 5/11/09 and closed 5/19/09), CV 09-  
 3551-UA (submitted 5/19/09 and closed 7/28/09), CV 09-4782-UA (submitted  
 7/2/09 and closed 7/16/09), and CV 09-5658-UA (submitted 8/3/09 and  
 closed 10/2/09). He unsuccessfully appealed in all four cases. (See  
 Ninth Circuit Case Nos. 09-56594, 09-56597, 09-56598, and 09-56599.)



1 application of the equitable tolling doctrine in this case.

2  
3 None of the seven contentions made by Petitioner in his Response,  
4 which are listed earlier, serve as a tenable basis for equitable  
5 tolling. Four of Petitioner's contentions -- that he has scabies at the  
6 moment, loses his train of thought and has writer's block, presently  
7 lacks access to his copy of a Rutter Group publication, and recently has  
8 been unable to photocopy sentencing-related documents he possesses --  
9 are plainly irrelevant, even if they had been supported by competent  
10 evidence, because Petitioner's limitations period expired many years  
11 ago. His present circumstances do not give rise to any basis for  
12 invoking the equitable tolling doctrine.

13  
14 Petitioner's bare contention that he has been "sick" most of his  
15 life is too vague to state a viable basis for equitable tolling.  
16 However, even if this assertion had been stated more certainly and  
17 adequately supported, it could not warrant equitable tolling, because  
18 the undisputed record shows that any such identified illness has not  
19 impeded Petitioner from vigorously pursuing habeas and civil rights  
20 relief in the state and federal courts during the relevant time period.  
21 In this Court alone, Petitioner has submitted over 25 habeas petitions  
22 and civil rights complaints since 1995. Indeed, Petitioner has been  
23 such a vigorous litigant that the Ninth Circuit, on April 21, 2011,  
24 entered a pre-filing review order against him. (See Ninth Circuit Case  
25 No. 11-80032, Docket No. 3.)

26  
27 Petitioner's contention that the limitations period for "all" of  
28 his claims must be tolled, because Ground Twenty-Two is "newly



1 discovered," fails for two reasons. First, the Section 2244(d)  
2 limitations period applies on a claim-by-claim basis. Mardesich v.  
3 Cate, 668 F.3d 1164, 1171 (9th Cir. 2012). Even if, *arguendo*, there  
4 were a basis for finding that the limitations period should be tolled or  
5 otherwise delayed for Ground Twenty-Two, the remaining 22 claims of the  
6 Petition would not *ipso facto* receive any such delayed commencement of  
7 the limitations period and/or equitable tolling, and they would remain  
8 untimely. Moreover, and critically, Petitioner's assertion that Ground  
9 Twenty-Two is "newly discovered" is specious. Ground Twenty-Two alleges  
10 that Petitioner is entitled to a 25-year sentence rather than his  
11 sentence of life without the possibility of parole, because: the jury  
12 hung during the penalty phase, and thus, the special findings  
13 requirement of California Penal Code § 190.4(a) was not satisfied; and  
14 the continued denial to Petitioner of half-time credits is an "excessive  
15 fine" and violates the Eighth Amendment's Cruel and Unusual Punishment  
16 Clause. The events underlying Petitioner's first assertion, plainly,  
17 were known to him at the time of trial, or at least should have been.  
18 Petitioner's second assertion also could have been discovered by him at  
19 any time following sentencing; his failure to raise such a claim until  
20 over 23 years after he was sentenced does not evidence the diligence  
21 required to equitably toll his limitations period.

22  
23 Finally, Petitioner's contention that he unconsciously made  
24 unspecified mistakes regarding filing deadlines and his limitations  
25 period is patently insufficient to warrant equitable tolling. A *pro se*  
26 habeas petitioner's inadvertent legal mistake is not a circumstance

warranting equitable tolling.<sup>12</sup> As the federal courts have repeatedly recognized, "[i]t is clear that *pro se* status, on its own, is not enough to warrant equitable tolling." Roy, 476 F.3d at 970. Ignorance of the law and lack of legal sophistication do not constitute "extraordinary circumstances" warranting equitable tolling. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006)(collecting cases from other circuits and holding that "a *pro se* petitioner's lack of legal sophistication is not, by itself, an extraordinary circumstance"); see also Johnson v. United States, 544 U.S. 295, 311, 125 S. Ct. 1571, 1582 (2005)(in 28 U.S.C. § 2255 context, rejecting movant/prisoner's attempt to justify his lack of diligence based on his *pro se* status and lack of legal sophistication, and stating: "we have never accepted *pro se* representation alone or procedural ignorance as an excuse for prolonged inattention when a statute's clear policy calls for promptness"); Ford v. Pliler, 590 F.3d 782, 789 (9th Cir. 2009)(observing that the equitable tolling "standard has never been satisfied by a petitioner's confusion or ignorance of the law alone"); Waldron-Ramsey, 556 F.3d at 1013 n.4 ("a *pro se* petitioner's confusion or ignorance of the law is not, itself, a circumstance warranting equitable tolling").

The equitable tolling inquiry is a "fact-specific" one. See, e.g., Spitsyn, 345 F.3d at 799; Frye, 273 F.3d at 1146. Even if the vague facts alleged by Petitioner had been supported and could be credited, the equitable tolling doctrine could not be applied, because his allegations are insufficient to invoke it. Accordingly, tolling cannot

---

<sup>12</sup> Indeed, even when a petitioner's attorney negligently makes a mistake that causes a habeas petition to be untimely, this fact alone will not justify application of the doctrine. See Miranda, 292 F.3d at 1066-68; Frye v. Hickman, 273 F.3d 1036, 1146 (9th Cir. 2001).

1 save this action from its own untimeliness.

2  
3 In sum, the Petition is substantially untimely on its face.<sup>13</sup> As  
4 plaintiff was advised in the OSC, district courts are permitted to  
5 consider, *sua sponte*, whether a petition is untimely and to dismiss a  
6 petition that is untimely on its face after providing the petitioner  
7 with the opportunity to be heard. Day v. McDonough, 547 U.S. 198, 209,  
8 126 S. Ct. 1675, 1684 (2006); Wentzell v. Neven, 674 F.3d 1124, 1126  
9 (9th Cir. 2012). Through the detailed explanation in the OSC of why  
10 this case is untimely, Petitioner was provided with notice of the  
11 timeliness problem in this case and an opportunity to be heard, and he  
12 has filed his Response. Having considered the Response, all filings in  
13 this case, and the matters of which judicial notice may be taken, it is  
14 clear that this action is substantially untimely. Accordingly,  
15 dismissal is warranted.

16  
17 For the foregoing reasons, IT IS ORDERED that: the Petition is  
18 dismissed, with prejudice, on the ground that it is untimely; and  
19 Judgment shall be entered dismissing this action, with prejudice, for  
20 untimeliness.

21  
22 In addition, pursuant to Rule 11(a) of the Rules Governing Section

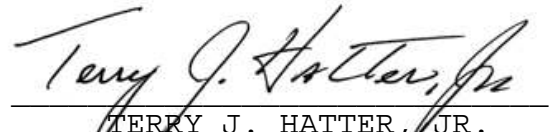
---

23  
24 <sup>13</sup> As Magistrate Judge Nagle noted in the OSC, in Ground Twenty,  
25 Petitioner cites "U.S. Const. Art. I § 9(2)" and states that he "seeks  
26 waiver of the Limitation of habeas corpus during a case of rebellion and  
27 or invasion where petitioner's case facts relates back to 1986 and there  
28 was no suspension." Even if this is an attempt by Petitioner to invoke  
the Suspension Clause as a basis for avoiding the Section 2244(d)(1)  
limitations period, it fails. Claims of this nature have been rejected  
routinely, and there is no basis for finding Petitioner's assertion  
meritorious here. See, e.g., Corjasso v. Ayers, 278 F.3d 874, 880 (9th  
Cir. 2002); Green v. White, 223 F.3d 1001, 1003-04 (9th Cir. 2000).

1 2254 Cases in the United States District Courts, the Court has  
2 considered whether a certificate of appealability is warranted in this  
3 case. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484-  
4 85, 120 S. Ct. 1595, 1604 (2000). The Court concludes that a  
5 certificate of appealability is unwarranted and, thus, a certificate of  
6 appealability is DENIED.

7  
8 IT IS SO ORDERED.

9  
10 DATED: August 28, 2012.

11  
12   
TERRY J. HATTER, JR.  
UNITED STATES DISTRICT JUDGE

13 PRESENTED BY:

14   
15 MARGARET A. NAGLE  
16 UNITED STATES MAGISTRATE JUDGE